

BEFORE THE  
POSTAL REGULATORY COMMISSION  
WASHINGTON, D.C. 20268-0001

Petition for Rulemaking

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Docket No. RM2015-20

**PETITION OF THE ASSOCIATION FOR POSTAL COMMERCE AND  
ALLIANCE OF NONPROFIT MAILERS  
TO INITIATE RULEMAKING PROCEEDING  
(August 17, 2015)**

In comments filed today responding to Order No. 2586, the Association for Postal Commerce (“PostCom”), the Alliance of Nonprofit Mailers (“ANM”), Major Mailers Association, MPA—The Association of Magazine Media, and the National Postal Policy Council (collectively, “PostCom, *et al.*”) suggested that the Commission use the standard governing *de minimis* rate changes in 39 C.F.R. § 3010.30 to determine whether a change in mail preparation requirements has rate effects with price cap implications and to apply that standard in the context of the Full Service IMb requirement at issue in Docket No. R2013-10R. *See* Docket No. R2013-10R, Initial Comments of the Association for Postal Commerce, *et al.* in Response to Order No. 2586 (Aug. 17, 2015). In those comments, PostCom, *et al.* further suggested that changes to the Commission’s procedural rules would be helpful in implementing this standard in future cases. In this petition for rulemaking, PostCom and ANM describe the changes they believe should be implemented and ask the Commission to institute a rulemaking proceeding to develop rules in line with this proposal.

## **I. PETITION FOR RULEMAKING**

In their Initial Comments in Docket No. R2013-10R, PostCom, *et al.* explained how the Commission could use the *de minimis* standard in 39 C.F.R. § 3010.30 to determine whether a change in mail preparation requirements has rate effects significant enough to have price cap implications. As PostCom, *et al.* explained, the Commission can apply that standard to the facts in Docket No. R2013-10R without making any changes to its rules. To apply the standard in future cases, however, some minor adjustments to existing rules and the creation of new procedures would be helpful. PostCom and ANM describe these changes below and request that the Commission establish a rulemaking docket to consider these proposals.

### **A. Proposed Changes to Existing Rules**

The following modifications to the Commission's existing rules would assist the Commission in applying the *de minimis* standard in future cases:

First, the Commission should modify rule 3010.12 to require the Postal Service to certify that all rule changes implemented since the previous rate adjustment or as part of the noticed rate adjustment that have not been treated as rate changes in price cap calculations have only a *de minimis* effect, as defined by rule 3010.30, on mail preparation costs and the rates actually paid by mailers.

Second, the Commission should modify rule 3010.11(b) to encourage interested parties to comment on whether any rule changes will have more than a *de minimis* effect on mail preparation costs and the rates actually paid by mailers.

Third, the Commission should modify rule 3010.11(d) to specifically reference that the PRC's determination of whether the market-dominant rate adjustment complies with the price cap will include an evaluation of whether any unaccounted-for rule changes have more than a *de minimis* effect on mail preparation costs or the rates actually paid by mailers, but only if mailers

or the Public Representative raise the issue in their comments on the price change. If no parties object to the Postal Service's certification that any rule changes resulted in only a *de minimis* increase in rates, the Commission should defer to the Postal Service's determination.

These three modifications, coupled with the substantive *de minimis* standard in rule 3010.30, will create a simple, workable process through which the Commission can evaluate the effect of changes to mail preparation requirements in the context of a rate change without adding unnecessary layers of procedure. As not all changes to mail preparation requirements are made at the same time as annual rate changes, however, the Commission should consider developing additional procedures to address rule changes made outside the context of a rate change.

**B. New Procedures to Govern USPS Rule Changes Outside of Regular Rate Filings**

Not all changes to mail preparation requirements with rate effects are undertaken concurrently with regular rate change filings. The Postal Service regularly makes changes to mail preparation requirements in the Domestic Mail Manual through Federal Register notices, DMM advisories, and other means. Additionally, changes to requirements outside of the DMM, such as changes to labeling lists which result in losses of rate discounts, can result in *de facto* rate increases. To protect mailers against such changes with more than *de minimis* rate effects which occur outside of an annual rate adjustment proceeding, the Commission should enact a rule providing mailers with an opportunity to contest changes in Postal Service requirements that may have material rate effects.

PostCom and ANM propose a rule that would require the Postal Service, whenever it notices a change in mail preparation requirements (preferably through a Federal Register notice, but also through other means, such as a DMM advisory or Postal Bulletin notice) to include a statement as to whether the rule change is likely to have more than a *de minimis* effect on rates.

If the change will have more than a *de minimis* rate effect (measured by the combination of compliance costs and additional postage costs, as described in the comments filed today by PostCom, *et al.* in R2013-10R), the Postal Service must file a notice of rate change pursuant to rule 3010.10. If the rule change will not have such an effect, the Postal Service may proceed with the rule change through its normal procedures and account for any *de minimis* increase in rates in its next full rate filing.

Along with this notice requirement, mailers should have the right to challenge the Postal Service's certification of a *de minimis* rate effect. The proper time period for a challenge can be determined in the rulemaking proceeding, but mailers should have at least 15 days from the time of notice to evaluate the impact of the proposed change. If no challenge is filed with the Commission within that time, the Commission should not take any action. If a challenge is filed, however, the Commission would have a period of time to determine whether the proposed rule change would have more than a *de minimis* rate effect. If the Commission determines the change will have a *de minimis* rate effect, the Postal Service may proceed without further interference from the Commission. If, however, the Commission determines that the proposed change will have a greater than *de minimis* rate effect, it may order the Postal Service to file a notice of rate change pursuant to rule 3010.10.

This procedure has benefits for the Postal Service, mailers, and the Commission. Putting the onus on mailers to contest rule changes will provide predictability to the Postal Service, as it will not need to worry that the Commission will intrude into operational matters on its own initiative. Further, because of the resources that would need to be expended to challenge a proposed change, the Postal Service can rest assured that only changes with significant cost implications to mailers will be brought to the Commission's attention. Accordingly, the

proposed procedure should not burden Commission resources, as mailers will filter only the most important cases to the Commission's attention.

The procedure protects mailers by providing them a clear right of redress. Additionally, it assists mailers and the Postal Service by providing an incentive to the Postal Service to work with mailers and service providers from the beginning in developing changes to mail preparation requirements. If the Postal Service, mailers, and service providers collaboratively develop new regulations, it is unlikely that the changes will be challenged. At a minimum, the Postal Service will be much better informed than it currently is as to the likely cost implications of its proposed changes. The procedure will therefore foster trust and cooperation between the Postal Service and the mailing industry, increasing the value of the mail.

Further, PostCom and ANM expect that most routine changes to mail preparation requirements will fall within the *de minimis* exception. But as has been shown with the Full Service IMb requirement, some changes to mail preparation requirements can, and do, have significant effects on the costs mailers must bear to enter their mail. When a mail preparation change forces mail into a higher rate category or forces mailers to incur significant additional cost to maintain their existing rate, the change in requirements, as the Commission properly acknowledged in Order No. 1890 and the court upheld, is a *de facto* change in rates. The Commission should enact procedures to account for such effects and protect mailers from unwarranted (and often unintended) *de facto* rate increases.

## **II. CONCLUSION**

The procedures described above will assist the Commission in implementing the *de minimis* standard that should govern mail preparation changes with rate effects in future cases, protect mailers from *de facto* rate increases, and foster cooperation between the Postal Service

and the mailing industry. Accordingly, PostCom and ANM request that the Commission initiate a rulemaking proceeding to consider these suggested changes to the Commission's rules.

Respectfully submitted,

David M. Levy  
VENABLE LLP  
575 7<sup>th</sup> Street NW  
Washington DC 20005  
(202) 344-4732  
[dmlevy@venable.com](mailto:dmlevy@venable.com)  
*Counsel for the Alliance of Nonprofit Mailers*

Matthew D. Field  
Ian D. Volner  
VENABLE LLP  
575 7<sup>th</sup> Street NW  
Washington DC 20005  
(202) 344-8281  
[mfield@venable.com](mailto:mfield@venable.com)  
[idvolner@venable.com](mailto:idvolner@venable.com)  
*Counsel for Association for Postal Commerce*